Supreme Court, U.S.
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No. 96-1082

In The

Supreme Court of the United States

October Term, 1996

ALGERNON BLAIR AND UNITED STATES FIDELITY AND GUARANTY COMPANY,

Petitioners,

v.

BEAMAN WALTERS,

Respondent.

On Petition For A Writ Of Certiorari From The Supreme Court Of North Carolina

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is N.C. Gen. Stat. § 97-63 of the North Carolina Workers Compensation Act, requiring that asbestosis claimants have the additional burden of proving two years of exposure to asbestos in North Carolina within the ten years preceding their last injurious exposure, unconstitutional under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution?

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STATEMENT OF THE CASE

Respondent, Beaman Walters, filed a workers compensation claim on June 6, 1991, under the North Carolina Workers' Compensation Act, North Carolina Gen. Stat. §§ 97-1 *et seq.* (Michie 1996), based on his development of asbestosis, a statutorily-recognized occupational disease under N.C. Gen. Stat. § 97-53(24). North Carolina law requires that under the state Workers Compensation Act, all occupational disease claimants, including asbestosis victims, must (1) meet jurisdictional requirements in order to file claims within the state, N.C. Gen. Stat. § 97-36; (2) establish that their condition is work-related, *Duncan v. Charlotte*, 324 N.C. 86, 66 S.E.2d 22 (1951); and (3) file claims for benefits only against the employer where the claimant last had injurious exposure to the hazards of the disease for a minimum of thirty days or parts thereof. N.C. Gen. Stat. § 97-57. The statutory provision at issue in this case, N.C. Gen. Stat. § 97-63, adds a specific requirement that compensation not be payable unless the asbestosis or silicosis claimant can also prove a period of in-state exposure within a specific time frame – two years of exposure within North Carolina, within the ten years preceding last injurious exposure.

As required under North Carolina law, N.C. Gen. Stat. § 97-57, Walters filed his claim against Petitioner Algernon Blair as the employer where Walters contended he was last injuriously exposed to the hazards of asbestos for the requisite statutory period. Walters contended that his asbestosis was the result of lifetime occupational asbestos exposure and was therefore caused by his employment. In addition, as required under N.C. Gen. Stat. § 97-63, he contended that he had sustained two

years of asbestos exposure in North Carolina during the ten years preceding his last injurious exposure.

The evidence at his hearing showed that Walters is a lifelong resident of Fairmont, North Carolina, who from 1941 through 1985 was employed as a welder and pipefitter. (T. pp. 3, 32) Beginning in the mid-1950's, Respondent began having workplace exposure to asbestos. Pet. App. at 8a. While his exposure during the 1950's took place at job sites in Tennessee and Virginia, for many years throughout the 1960's and early 1970's Walters had substantial workplace exposure to asbestos in North Carolina. (T. pp. 16-19, 20, 23-25) Walters' last exposure to asbestos occurred in 1980, during his employment with Algernon Blair, in North Carolina. Pet. App. at 9a.

In his brief to the Deputy Commissioner, Walters raised the argument that N.C. Gen. Stat. § 97-63 was unconstitutional under various North Carolina and United States constitutional provisions, including Article I, Section 19 of the North Carolina Constitution, and the Fourteenth Amendment to the United States Constitution. The Deputy Commissioner's Opinion and Award found that Walters had been exposed to asbestos dust during his career as a pipefitter and welder, that he developed asbestosis as a result of his workplace exposure, and that he was last injuriously exposed to the hazards of asbestos during his work for Algernon Blair pursuant to N.C. Gen. Stat. § 97-57. Pet. App. at 10a-11a. However, it further concluded that Walters had less than two years of exposure to asbestos dust in North Carolina during the ten years preceding his last injurious exposure and on that basis held that the Industrial Commission did

not have jurisdiction over the claim, which was therefore denied. Pet. App. at 11a.

Walters appealed to the Full Commission, which affirmed the Deputy Commissioner's decision. Walters then appealed to the North Carolina Court of Appeals, again asserting that Section 97-63 is unconstitutional under Art. I Section 19 of the North Carolina Constitution and the Equal Protection Clause of the United States Constitution.

The Court of Appeals reversed the decision below, holding that Section 97-63 violates both constitutional provisions. The Court set forth its equal protection test as follows:

> If the statute impacts upon a suspect class or a fundamental right, the government must 'demonstrate that the classification is necessary to promote a compelling governmental interest' (strict scrutiny). *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 11, 269 S.E.2d 142, 149 (1980). If the statute does not impact upon a suspect class or a fundamental right, it is only necessary to show that the classification created by the statute bears a rational relationship to or furthers some legitimate state interest (minimum scrutiny). *State Util. Comm'n v. Carolina Util. Customers Ass'n, Inc.*, 336 N.C. 657, 691, 446 S.E.2d 332, 346 (1994).

Walters v. Blair, 120 N.C. App. 398, 400, 462 S.E.2d 232, 234 (1995). The Court then analyzed Section 97-63 under the minimum scrutiny standard, stating, "[t]he question is whether N.C. Gen. Stat. § 97-63 . . . furthers some legitimate state interest." *Id.* Turning to the only two interests asserted by the Petitioners, the Court ruled:

> Although the prevention of forum shopping and the protection against claims for which the employer is not responsible are legitimate state interests and are served by N.C. Gen. Stat. § 97-63, the statute is grossly underinclusive in that it does not include all who are similarly situated. *See* Laurence Tribe, *American Constitutional Law* § 16-4 (2d ed. 1988) (underinclusive classification burdens 'less than would be logical to achieve the intended governmental end'); *see also Zablocki v. Redhail*, 434 U.S. 374, 390, 54 L.Ed. 2d 618, 633 (finding statute underinclusive and therefore unconstitutional); *Bernal v. Fainter*, 467 U.S. 216, 221, 81 L.E.2d 175, 181 (1984) (a classification that is substantially underinclusive undercuts the governmental claim that the classification serves state interests).

Id. at 401, 462 S.E.2d at 234. The Court noted that, with respect to the purposes proposed, Petitioners "have not asserted *any* justification for treating asbestosis and silicosis differently" than other serious diseases that develop over time, and found Section 97-63 unconstitutional. *Id.* (emphasis added).

Algernon Blair filed an appeal to the North Carolina Supreme Court, which affirmed the decision of the Court of Appeals *per curiam* without discussion. *Walters v. Blair*, 344 N.C. 628, 476 S.E.2d 105 (1996).

REASONS FOR DENYING THE WRIT

This Court should deny review. As will be shown below, there is no controversy or conflict between the

federal appellate or state courts regarding the constitutionality of this type of provision. No decision of this Court, of any other federal court of appeals, or of any other state court of last resort has ruled upon the constitutionality of a provision similar to the one at issue in this Petition. Further, to the extent that the North Carolina Supreme Court relied on the decision of the Court of Appeals, that Court applied the correct "rational basis" test in a manner entirely consistent with this Court's equal protection precedent. The North Carolina Supreme Court was correct in affirming that Section 97-63 violates the state and federal Equal Protection Clauses.

Moreover, the North Carolina Supreme Court's ruling will affect only the relatively tiny number of asbestosis claimants in North Carolina who did not work primarily in North Carolina during the later years of their employment. Walters has not challenged any other provision of the North Carolina Workers Compensation Act governing procedures or benefits due asbestosis claimants, and contends that Section 97-63 is uniquely arbitrary and unjustified. Petitioners have been able to identify only a handful of other states that have provisions similar to Section 97-63. The consequences of the North Carolina decision therefore will not threaten the states workers compensation systems, even were it to be followed in other states.

I. THERE IS NO CONFLICT BETWEEN FEDERAL APPELLATE COURTS OR STATE COURTS OF LAST RESORT ON THIS ISSUE

No federal appellate court has ever decided the constitutionality of a workers compensation provision similar to Section 97-63. There have likewise been no state court decisions of last resort addressing the constitutionality of similar provisions. Petitioners have only identified five other states with similar provisions requiring a period of in-state exposure within a specific time frame (Pet. at 29 n. 12)[1]; North Carolina is the only state jurisdiction known to have addressed the constitutionality of this kind of provision. Petitioners have not pointed to any other state court decision that would suggest that other state courts would rule on this issue differently.

Because of this lack of conflict, and because determining the constitutionality of Section 97-63 would necessarily draw this Court into substantive interpretation of a complex state statute better performed by the appellate courts of North Carolina, Respondent respectfully submits that there is no need for this Court to intervene in this case.

II. THE NORTH CAROLINA SUPREME COURT'S DECISION IS CONSISTENT WITH THIS COURT'S EQUAL PROTECTION PRECEDENT

Petitioners argue as grounds for certiorari that the North Carolina Court of Appeals' decision applied an

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[1] *See* discussion, Section IV, *infra*.

erroneous standard of review that conflicts with this Court's equal protection "rational basis" standard. Even assuming that the North Carolina Supreme Court fully embraced the reasoning of the North Carolina Court of Appeals, however, the Court of Appeals clearly distinguished between the strict scrutiny and rational basis tests and applied the correct standard. Petitioners omit the relevant language of the Court of Appeals' decision. Pet. at 4. In fact, the Court's opinion properly described and applied the "rational basis" standard.

The Court stated the rule for "strict scrutiny" as requiring the government to "demonstrate that the classification is *necessary to promote a compelling governmental interest*"; under the "rational basis" test, the classification must "bear[] a *rational relationship to or further[] some legitimate state interest.*" *Walters*, 120 N.C. App. at 400, 462 S.E.2d at 234 (emphasis added). The Court then expressly applied the correct standard to this case: "The question is whether N.C. Gen. Stat. § 97-63, which treats employees with asbestosis and silicosis differently from employees with other occupational diseases, *furthers some legitimate state interest.*" *Id.* (emphasis added). The Court of Appeals recognized that the Petitioners suggested "legitimate state interests" served by Section 97-63, but it found that they "have not asserted *any justification* for treating asbestosis and silicosis differently from these other serious diseases." *Id.* at 401, 462 S.E.2d at 234 (emphasis added). The Court therefore held the provision unconstitutional on the grounds that Section 97-63 distinguishes between occupational disease victims "without any valid reason." *Id.* at 400, 462 S.E.2d 233.

The North Carolina Court of Appeals' holding thus rests upon the finding that there is *no* justification whatsoever for drawing a line between asbestosis and silicosis claimants and other occupational disease claimants for the purposes of Section 97-63. This holding is entirely consistent with this Court's precedent, that a statutory provision will be unconstitutional under the rational basis approach if the classification drawn is entirely arbitrary or based on criteria wholly unrelated to the statutory objective. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

Petitioners' argument that the Court of Appeals applied the incorrect standard ignores the Court's language discussed above, and is based solely on the Court's citation to a treatise on constitutional law and two "strict scrutiny" cases. Pet. at 9-10. These brief citations occur after the Court of Appeals' first reference to the concept of "underinclusiveness," 120 N.C. App. at 401, 462 S.E.2d at 234, and appear intended to provide general authority for the scope and use of the term. The first authority cited, Laurence H. Tribe, *American Constitutional Law* § 16-4, discusses underinclusiveness in the context of both "rational basis" and "strict scrutiny." As Petitioners themselves argue, however, the treatise emphasizes that the "rational basis" test has not commonly been used to invalidate statutes as underinclusive. Pet. at 10. The Court of Appeals' citation to this authority thus indicates the Court's awareness of the correct standard and its limits. The Court followed its citation to Professor Tribe's treatise with a "see also" citation to two "strict scrutiny" cases, *Zablocki v. Redhail*, 434 U.S. 374 and *Bernal v. Fainter*, 467 U.S. 216. The Court did not expressly state

that it applied the *Zablocki* or *Bernal* analysis, and a "see also" cite means nothing more than that the authority cited constitutes additional source material supporting a proposition. *The Bluebook: A Uniform System of Citation* R. 1.2(a) (15th ed. 1991). Given the Court's repeated, correct expression of the "rational basis" standard, these three citations taken in context fail to establish that the incorrect standard was applied. Even if these citations raise some ambiguity about the Court's rationale, its ultimate finding – that there is *no* basis for distinguishing between asbestosis and other occupational diseases with respect to the classification in question – would survive the "rational basis" test.

Finally, there is no indication from the Court of Appeals' decision, or the North Carolina Supreme Court's affirmation, that a newer, more liberal equal protection analysis was applied. Petitioners characterize this case as out of line with this Court's review of other "social welfare statutes." Pet. at 10-11. The cases cited all construed provisions of the Social Security Act excluding certain groups from benefits. In all of those cases, this Court upheld legislative line-drawing based upon *valid* generalizations about the groups distinguished. *See Bowen v. Owens*, 476 U.S. 340 (1986) (divorced widows reasonably less likely than non-divorced widows to be financially dependent on spouse); *Califano v. Boles*, 433 U.S. 282 (1979) (woman who never married wage earner far less likely to be dependent on him at death); *Mathews v. DeCastro*, 429 U.S. 181 (1976) (divorced wife less likely to be dependent on ex-husband wage earner than wife); *Califano v. Jobst*, 434 U.S. 47 (1977) (marriage of disabled child to non-eligible spouse valid criteria for terminating

benefits since marriage usually related to change in dependency status). As this Court recognized in *Jobst*, however, "a distinction which irrationally differentiates between identically situated persons" would not present a rational justification for a statutory classification. *Id.* at 53. Here, the Court of Appeals specifically found no difference between asbestosis and other occupational disease claimants with respect to the classification at issue. The Court of Appeals' decision therefore does not conflict with the cases relied upon by Petitioners.

III. THIS CASE WAS PROPERLY DECIDED AND DOES NOT REQUIRE REVIEW BY THIS COURT TO CORRECT ANY ERROR

Petitioners argue that this case should be reviewed because the decision below was incorrect. However, the North Carolina Supreme Court was correct in holding that the particular statutory provision at issue, Section 97-63, is unconstitutional. Section 97-63 is a special, unusually harsh provision in the North Carolina Workers Compensation Act that operates to bar otherwise meritorious claims of certain asbestosis claimants and that makes unreasonable distinctions between asbestosis and other occupational disease victims for no legitimate reason. Even if the decision below was in error, which Respondent does not concede, this Court has not chosen to play the role of correcting each and every possibly erroneous decision by the state courts on state law issues, and certiorari should be denied.

Section 97-63 was inserted into a larger statutory scheme enacted by the North Carolina legislature that

establishes requirements for employer liability and payment of limited benefits for on the job injury and occupational disease. Section 97-63 imposes its requirements only on asbestosis and silicosis claimants. As will be shown below, it mandates that once an asbestosis claimant has established that he has a work-related disease and that he was last injuriously exposed while working for the defendant-employer, his otherwise valid claim still will not be compensable unless he can establish two years of in-state exposure within the ten-year period preceding his last injurious exposure. In this case, Beaman Walters had no difficulty establishing extensive in-state exposure during the 1960's, but because he had little in-state asbestos exposure again until 1980, when he worked for Petitioner Algernon Blair, his meritorious claim was dismissed for lack of jurisdiction. Pet. App. at 15a, 17a. If Mr. Walters had been a byssinosis claimant, or if he had incurred his exposure at Algernon Blair a few years earlier, he would have been awarded benefits for his disease. If he had the same exposure during the same period, but had filed a claim for asbestos-related lung cancer, his claim would not have been denied on this basis.

Petitioners argue that the primary purpose of Section 97-63 is to establish a minimum period of exposure required for asbestosis claimants to prove their employment is the "proximate cause" of their disease, without which North Carolina employers would become "general insurers" for asbestosis victims. According to Petitioners, without Section 97-63 there would be no causation requirement for asbestosis claimants. Pet. at 17-20. Petitioners' contention is simply incorrect. This argument

was raised for the first time before the North Carolina Supreme Court, without success.

North Carolina law is clear that all occupational disease claimants, including for asbestosis and for others expressly listed as "scheduled" occupational diseases, must prove a causal relationship between the disease and their employment in order to obtain benefits. Although the Workers' Compensation Act does not contain language expressly requiring all occupational disease claimants to prove their condition is work-related, the North Carolina Supreme Court has established that proof of causal relationship is nonetheless required. In *Duncan v. Charlotte*, 324 N.C. 86, 66 S.E.2d 22 (1951), the Court held that the 1935 amendment adding coverage for occupational diseases, including asbestosis, "in nowise relaxed the fundamental principal which requires proof of causal relation between injury and employment. And none the less, since adoption of the amendment, may an award be sanctioned *unless it can be shown that the disease was incident to or the result of the particular employment in which the workman was engaged.*" *Id.* at 90, 66 S.E.2d at 25 (emphasis added). *See also Booker v. Medical Center*, 297 N.C. 458, 476, 256 S.E.2d 189, 200 (1979). Neither *Booker* nor *Duncan* relied on Section 97-63 in holding that all occupational disease claimants must establish causation. Indeed, despite the finding that Beaman Walters had not met the requirements of Section 97-63, in this case the Industrial Commission found "as a result of exposure to asbestos dust during his many years of work in the construction trade as a pipe welder [Walters] has developed asbestosis." Pet. App. at 17a. Accordingly, there is no legal foundation for Petitioners' argument that Section 97-63

operates to require proof of causation for asbestosis claims.

In addition, even if Section 97-63 were viewed as a causation provision, its requirements are not rationally related to causation, and in fact are contrary to long-established knowledge about the cause and development of asbestos-related disease. First, the statute requires that exposure take place in North Carolina. The legislature could not rationally have believed that workers could only contract asbestosis in North Carolina; this critical jurisdictional requirement in Section 97-63 is entirely unrelated to causation. Second, Section 97-63 requires that the claimant have *recent* exposure to asbestos in order to prevail – exposure must occur within the ten years prior to last injurious exposure. This requirement, however, is flatly contrary to common medical knowledge about the latency period between exposure and the development of asbestosis, which views that asbestosis does not typically develop until *several decades* after exposure. Even very heavy exposure is known to produce a long latency period rarely shorter than fifteen years. *See* Victor L. Roggli and Philip C. Pratt, *Asbestosis, in Pathology of Asbestos-Associated Diseases* 77 (Victor L. Roggli et al. eds., 1992). *See also Honeycutt v. Carolina Asbestos Co.*, 235 N.C. 471, 70 S.E.2d 426 (1952) (recognizing that both asbestosis and silicosis have latency periods of at least 13 ½ years).

In contrast, Section 97-63 focusses on the employee's most recent employment history, a period that is far less relevant to whether the pulmonary disease is work-related. Under Section 97-63, claimants like Mr. Walters are not compensated even though medical opinion holds

that their disease is work-related. On the other hand, a claimant whose only two years of asbestos exposure occurred immediately before last injurious exposure and diagnosis could establish that his asbestosis was work-related and prevail in his claim, even if he lacked any prior workplace exposure and from a medical point of view did not have work-related asbestosis. Given the medical knowledge of causation, then, it is completely *unreasonable* for a "causation" requirement to mandate exposure for a two-year period at the *end* of a claimant's exposure history rather than at the beginning. Section 97-63 does the opposite of what a true proximate cause requirement would do.

While the goal of compensating only those claimants who can prove that their employment caused their diseases is unquestionably legitimate, the provision here acts to screen in or out valid claims based on fortuitous circumstances unrelated to causation. Viewed as a causation requirement, Section 97-63 is the essence of capricious state action. Access to the court system "cannot be granted to some litigants and capriciously and arbitrarily denied to others without violating the Equal Protection Clause." *Lindsey v. Normet*, 405 U.S. 76, 77 (1972) (holding state double-bond requirement for tenants appealing wrongful entry statute unconstitutional, despite purpose to screen out frivolous claims).

The only other purpose Petitioners offer for Section 97-63 is that it is intended to prevent forum shopping and insure that North Carolina employers "are not burdened with workers compensation claims for which they are not responsible." Pet. at 20. Section 97-63, however, is not rationally related to either end.

Section 97-57 of the Workers Compensation Act establishes a level of minimum injurious exposure with the employer that will be held liable for an asbestosis claim. Section 97-63's requirement that the asbestosis claimant have two years of in-state exposure does not require any additional exposure with the employer that will be held liable under Section 97-57, and thus does not ensure additional contacts with the employer that will "pay the costs" of the asbestosis claim. Pet. at 21.

North Carolina law already contains provisions that operate to limit a claimant's ability to forum shop, and Section 97-63 does not further serve this purpose. The Workers Compensation Act ties jurisdiction in workers compensation claims to whether an accident occurred in North Carolina or whether the parties have sufficient additional contacts with the state to warrant jurisdiction. N.C. Gen. Stat. § 97-36. In addition, for all occupational disease claimants, including asbestosis victims, the last injurious exposure provisions of the Act determine the single employer that can be sued and whether a claimant can pursue his claim in North Carolina. N.C. Gen. Stat. § 97-57. In fact, it appears that the majority of state workers compensation statutes have similar last injurious exposure rules applicable to occupational disease claimants that prevent occupational disease claimants from filing multiple claims against employers in different states. 4 A. Larson and L. Larson, *The Law of Workers Compensation* § 95.24 (1996).

Even if Section 97-63 in some rational way furthers the purpose of preventing forum-shopping and ensuring reasonable contacts with the employer obligated to pay the costs, the North Carolina Court of Appeals correctly

found that Petitioners have offered no rational reason for applying Section 97-63 only to asbestosis and silicosis claimants and not to other occupational disease claimants. Petitioners have identified several differences between asbestosis and byssinosis, none of which they contend to have any relationship to the specific purposes they urge for Section 97-63. Pet. at 24-25. The *only* concrete justification Petitioners propose for why asbestosis and not other occupational disease claimants should be subject to Section 97-63 is the contention that construction workers and miners are the employees most likely to be exposed to asbestos, and are likely to change employers more frequently than byssinosis claimants. Pet. at 25. There was no evidence presented to substantiate this extraordinarily broad generalization. Petitioners instead rely on a single North Carolina byssinosis case, *Peoples v. Cone Mills*, 69 N.C. App. 263, 317 S.E.2d 120 (1984), in which the plaintiff worked for one employer for a lengthy period. The Court in *Peoples* did not discuss the length of employment, those facts were irrelevant to the Court's holding, and *Peoples* is not authority for Petitioners' contention. This single case is woefully inadequate to support Petitioners' theory.[2] Neither the North Carolina

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[2] North Carolina textile mills are certainly not immune to plant closing and layoffs that result in changes of employment by mill workers, and Respondent can easily point to reported cases in which asbestosis or silicosis claimants remained with the employer for extended periods. *See, e.g., Young v. Whitehall*, 229 N.C. 360, 49 S.E.2d 797 (seven years of exposure with last employer); *Hartsell v. Hermoid Co.*, 249 N.C. 527, 107 S.E.2d 115 (1959) (almost 40 years exposure with last employer); *Huskins v. Feldspar Corp.*, 241 N.C. 1281, 84 S.E.2d 645 (1954) (over a decade of exposure with last employer).

Supreme Court nor the Court of Appeals, both of which are familiar with the North Carolina economy, gave Petitioners' argument weight.

In the absence of any justification distinguishing asbestosis claimants from other occupational disease claimants for the purpose put forth by Petitioners, the North Carolina Supreme Court correctly held that Section 97-63 is in violation of the Equal Protection Clause. *Royster*, 253 U.S. at 415.

IV. THE DECISION HOLDING SECTION 97-63 UNCONSTITUTIONAL WILL NOT THREATEN WORKERS COMPENSATION STATUTES IN NORTH CAROLINA OR ELSEWHERE

The decision holding Section 97-63 unconstitutional will affect only North Carolina asbestosis claimants who would otherwise be unable to establish the in-state exposure requirements. Comparing the number of these claimants to all occupational disease claimants, or to all injury-by-accident claimants in North Carolina, the proportion of claims affected will be relatively small. Further, Petitioners only have been able to identify five other states that have provisions similar to Section 97-63.[3] Even if

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[3] Petitioners identify eight states that they contend have similar provisions. Of these, only five actually have provisions similar to N.C. Gen. Stat. § 97-63, with in-state exposure requirements during a limited window of time. *See* Ark. Code Ann. § 11-0-602(b) (Michie 1996); Idaho Code § 72-443 (Michie 1989); Iowa Code Ann. § 85A.13(2) (West 1996); Kan. Stat. Ann. § 44-5A10 (1993); Pa. Stat. Ann. tit. 77, §§ 412, 1401(d) (1992). Of the remaining states referred to by Petitioners, the provision

these other jurisdictions followed the North Carolina holding, this decision would have only a limited impact.

Petitioners nonetheless argue that the ruling in this case threatens the continuing validity of the entire workers compensation scheme in North Carolina and elsewhere, on the grounds that this North Carolina Court of Appeals' rationale would erase as invalid any legislative distinctions between different types of occupational diseases. Pet. at 22-23, 26-27, 28-29. However, as explained in Section II, above, the Court of Appeals did not hold that no legislative classifications between occupational diseases are permissible. The Court's decision was properly limited to the constitutionality of Section 97-63, and review by this Court is not necessary.

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cited in the South Carolina statute only requires a minimum period of exposure for byssinosis and not asbestosis claims, with no requirement that exposure be in-state or within a specific window of time. S.C. Code Ann. § 42-11-60 (Law Co-op 1985). Nevada's and South Dakota's provisions only require a period of in-state exposure, without requiring that the exposure take place within a specific time frame. Nev. Rev. Stat. § 617.460(4) (1996); S.D. Codified Laws Ann. § 62-8-14 (1993).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court to deny the petition for writ of certiorari.

Respectfully submitted,

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